

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMENTUM SERVICES, INC. f/k/a
AECOM MANAGEMENT SERVICES, INC. f/k/a
URS FEDERAL SERVICES, INC.¹
Employer

and

Case 28-RC-249393

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
LOCAL LODGE SC711, AFL-CIO
Petitioner

DECISION ON REVIEW AND ORDER

On March 6, 2020, the Regional Director directed a mail-ballot election in a unit of employees employed by the Employer at Kandahar Airfield (KAF) in Kandahar, Afghanistan. The Petitioner prevailed in the election, and the Regional Director issued a Certification of Representative on September 25, 2020. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a request for review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

For the reasons stated below, the Employer's Request for Review of the Regional Director's Decision and Direction of Election is granted, as it raises substantial issues concerning the Regional Director's departure from officially-reported Board and Supreme Court precedent.² Upon review, we find that the Regional Director erred in directing an election in this case. Accordingly, we reverse the Regional Director's decision, vacate the Petitioner's certification, set aside the election, and dismiss the petition.

The Employer, a Delaware corporation, contracted with the United States Air Force to repair and maintain remotely-piloted aircraft (RPAs) in various locations around the world. There is no dispute that the Employer meets the Board's jurisdictional standards as a defense

¹ We have amended the caption to reflect the change to the Employer's name.

² The Board has exercised its discretion under Sec. 102.67(e) to examine the entire record. Based on careful review of the record and the Regional Director's decision, we reject the Employer's unsubstantiated claim that "it appears that the Regional Director merely worked backwards from the desired outcome, picking and choosing which precedent should apply along the serpentine path."

contractor.³ The Regional Director directed an election in a unit of the Employer's employees who maintain RPAs at KAF.⁴ KAF is owned and controlled by the Islamic Republic of Afghanistan; the military base there is used by NATO coalition forces including the United States. This case therefore raises a question of extraterritorial jurisdiction—that is, whether the National Labor Relations Act may be applied to the Employer's operations outside of United States territory.

Based on a background assumption that Congress concerns itself primarily with domestic, not foreign, matters, the Supreme Court has adopted a presumption against extraterritoriality. *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247, 255 (2010). In order to overcome the presumption, there must be a “clear indication” of Congress' intent to give a particular statute extraterritorial application. *Id.* The Supreme Court has repeatedly found that the Act's language, including Section 2(6)'s references to commerce with or through a “foreign country,” does not suffice to rebut the presumption against its extraterritorial application. See *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 251-252 (1991) (*Aramco*); *Morrison*, *supra*, at 262-263. In *Computer Sciences Raytheon*, 318 NLRB 966 (1995), the Board acknowledged that it was bound by the Court's interpretation to find that Congress did not intend the Act to apply in foreign countries. *Id.* at 968. The Board in *Computer Sciences* therefore dismissed a petition for an election among defense-contractor employees who worked at U.S. military bases in Antigua (a sovereign nation) and Ascension (a possession of the United Kingdom).⁵ The Board also rejected a claim in *Computer Sciences* that the U.S. had sufficient “sovereignty” or “legislative control” over those lands such that application of the Act there would not have been “truly ‘extraterritorial’” in the first place, as well as an argument that military bases in foreign countries constitute U.S. territory. *Id.* at 968-971.

Here, the Regional Director interpreted Section 2(6) in a manner that the Supreme Court has explicitly foreclosed. Although he explained, at some length, why he disagreed with the Court, he was nevertheless bound to apply that precedent, as are we. Thus, in keeping with the Court's statements in *Aramco* and *Morrison*, the language of Section 2(6) is not sufficient to establish the requisite “clear indication” of Congress' intent to give the Act extraterritorial application. And as in *Computer Sciences*, there can be no claim that the U.S. has sufficient sovereignty or legislative control over the Kandahar Airfield to consider it U.S. territory.

Accordingly, we reverse the Regional Director's direction of an election in this case, vacate the Certification of Representative, set aside the election, and dismiss the petition.⁶

³ The parties stipulated that the Employer's operations exert a “substantial impact” on the national defense of the U.S. See *Ready Mixed Concrete & Materials*, 122 NLRB 318 (1958). The parties also stipulated that the Employer provides services valued in excess of \$50,000 per year to the U.S. government.

⁴ The unit employees' work is almost exclusively abroad at KAF as they are sent on staggered four-month deployments. Thus, we are not presented here with a situation involving unfair labor practices against employees when they are temporarily working outside of the United States. See *California Gas Transport, Inc.*, 347 NLRB 1314 (2006), *enfd.* on other grounds 507 F.3d 847 (5th Cir. 2007); *Asplundh Tree Expert Co.*, 336 NLRB 1106 (2001), *enf. denied* 365 F.3d 168 (3d Cir. 2004).

⁵ See also *Range Systems Engineering Support*, 326 NLRB 1047 (1998) (petition was dismissed where employees worked at a U.S. military weapons testing facility in the Commonwealth of the Bahamas).

⁶ Given our finding that the Board lacks statutory authority to apply the Act to the Employer's operations in Afghanistan, we do not need to address the other issues raised by the Employer's Request for Review, such as

ORDER

IT IS ORDERED that the Certification of Representative that issued on September 25, 2020 is vacated and the petition is dismissed.

MARVIN E. KAPLAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

JOHN F. RING, MEMBER

Dated, Washington, D.C., May 21, 2021.

whether the Board should decline to assert jurisdiction here as a discretionary matter and whether the Regional Director erred in directing a mail-ballot election.